

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 3, 2014 at 2:00 p.m.

1. [11-48510](#)-C-13 PAUL SCHRUPP MOTION TO MODIFY PLAN
 RLC-2 Stephen M. Reynolds 4-14-14 [[79](#)]

CASE DISMISSED 4/23/14

Final Ruling: The case having previously been dismissed on April 23, 2014, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Modify Plan having been
presented to the court, the case having been
previously dismissed, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion is denied
as moot.

June 3, 2014 at 2:00 p.m.

Page 1 of 82

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2014. Forty-two days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan based on the following:

1. Debtors' plan may not be their best effort. 11 U.S.C. § 1325(b). Debtor is over median income and proposing plan payments of \$567.78 for 60 months with a 3% dividend to unsecured creditors. Debtors' plan seeks to retain two vehicles in Class 2 and reduce their second mortgage to \$0.00. Debtors further proposed to retain a time share in Class 4.

Debtor's most recent Form B22C (Dkt. 87) shows negative monthly disposable income on line 59 of (\$139.52), with an additional deduction of \$400.00 on line 60 for two vehicles. The amounts to a net negative (\$539.52).

The Trustees objects to deductions on the form based on the information Debtors provided in the schedules:

- a. Taxes: on line 30, taxes are reflected as \$4,679.82. Debtors' original form deducted \$3,607 for taxes and Schedules I & Amended J deduct a total of \$4,208 for taxes. Debtors have not offered any explanation as to why tax expenses have increased from the original form.
- b. Protection against family violence: on line 41, protection against family violence is reflected as \$35.00. Schedule J does not list any such expense.
- c. Charity: on line 45, charity costs are reflected as

- \$400.00. The amended Statement of Financial Affairs (Dkt. 66) discloses no charitable gifts.
- d. Additional allowance for two older vehicles: on line 60, an additional allowance for two older vehicles is reflected as \$400.00. Debtors' amended Schedule B shows that Debtors only own one older vehicle, a 2001 Chevy 3500.

Based on the applicable commitment period of 60 months, unsecured creditors should receive \$58,050 over the life of the plan. Debtors' Schedule I shows gross income of \$12,255 per month, and the budget indicates a combined timeshare expense of \$484 per month. Debtor has substantial income, is retaining non-essential property, and is supporting two adult children. The Trustee is not certain Debtors' motivation in reorganizing is sincere.

The court shares the Trustee's concerns regarding whether Debtors' plan comports with the best efforts requirements of 11 U.S.C. § 1325(b). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2014. Thirty-five days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The additional provisions of Debtors' modified plan authorizes disbursement of \$1,076 to the Class 5 creditor, State Board of Equalization, through April 28, 2014, and states that a balance is owed of \$2,785. Debtors do not outline continuing payments to this creditor for months 9 through 60 in the additional provisions and the modified plan no longer includes this creditor in Class 5. The creditor filed a priority claim on December 20, 2103 (Claim 12) in the amount of \$3,861.64. The Trustee has disbursed \$1,227.46 to this creditor through April 2014, with \$2,634.08 remaining to be paid.
2. The additional provisions of Debtors' modified plan proposes a plan payment of \$3,384 as of April 28, 2014, then \$376 per month for months 9 through 60 with additional payments of \$1,577.24 paid into the plan in June of each year until the plan is completed. Through April 2014, the Debtor paid a total of \$3,384. Trustee believes Debtors' payments for the remaining term of the plan are to begin in month 10, not 9, as stated because April 2014 is month 9 (Debtor's petition was filed July 31, 2013).

Trustee would have no objection if these issues were corrected in the Order Confirming the Plan.

Debtors' Response, filed 05/22/14 (Dkt. 81)

Debtors agree to add the State Board of Equalization back into Class 5 of the modified plan. The creditor was inadvertently left out. Debtors also agree that the remaining term of the plan is to begin in month 10. Debtors will make the corrections in the Order Confirming the Plan.

The court's decisions is to confirm the modified plan with the understanding that the relevant corrections will be made in the order confirming the plan. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on April 29, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. [14-22318](#)-C-13 AUDREY LYTLE
MMW-1 Melissa D. Polk
Thru #5

OBJECTION TO CONFIRMATION OF
PLAN BY THE BLUE SKY FUND, LLC
4-14-14 [[22](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 14, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Blue Sky Fund, LLC, is a California Limited Liability Company and secured creditor of Deb tor. On August 24, 2005, Debtor entered into a Home Equity Credit Line Revolving Loan Agreement with Residential Capital Mortgage Income Fund, LLC, which provided Debtor with a revolving line of credit maxing out at \$175,000. Pursuant to the agreement, Debto paid for advances of credited extended at an interest rate of 13.9%.

To secure repayment of the Agreement, Debtor granted ResCap a beneficial interest under a secured priority Deed of Trust and Assignment of Rents for Home Equity Revolving Line of Credit. The Deed of Trust encumbers property located at 4621 Windsong Street, Sacramento, California.

On December 30, 2008, Debtor and ResCap entered into a Forbearance Agreement, whereby Debtor agreed to remit \$2,300 to ResCap by January 5, 2009, and then \$1,300 monthly thereafter. On April 7, 2010, ResCap and Debtor entered into a second Forbearance Agreement, whereby Debtor agree to remit \$1,000 by April 15, 2010, and thereafter agreed to pay \$1,000 per month.

On December 7, 2012, ResCap assigned all its interesting in the Agreement and Deed of Trust to MOAD LLC, a California Limited Liability Company. On April 12, 2013, MOAD LLC assigned its interest in the Agreement and Deed of Trust to MAVI GOK LLC who then assigned its interest in the Agreement and Deed of Trust to Blue Sky on March 26, 2014.

On October 1, 2010, Debtor defaulted under the terms of the Agreement and Second Forbearance Agreement by not making the monthly payment due. The loan matured on September 1, 2013. The estimated total due and owing to Blue Sky as of Debtor's filing date is \$245,312.06.

Debtor has proposed no provisions to payoff Blue Sky's loan through the Plan. Blue Sky requests an interest rate of 13.9% on its mature loan balance and does not consent to a cure period longer than 60 months.

Based upon the maturity date of the loan and Debtor's stated income and expenses in her bankruptcy schedules, Blue sky questions whether Debtor's plan is financially feasible.

The court's decision to deny confirmation. Debtor has a pending Motion to Value the secured claim of Blue Sky, which is set for hearing on June 10, 2014. Until Blue Sky's claim is resolved, the court cannot confirm Debtor's plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. [14-22318](#)-C-13 AUDREY LYTLE
NLE-1 Melissa D. Polk

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
4-24-14 [[27](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 24, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors' plan relies on a Motion to Value the secured claim of MAVI/GOK, LLC, listed in Class 2C. To date, Debtor has not filed a Motion to Value and if it is not filed and granted, Debtor's plan lacks sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a)(6).

The court's decision to deny confirmation. The docket reflects that Debtor filed a Motion to Value the secured claim of Blue Sky Fund, LLC (successor-in-interest to MAVI/GOK, LLC) on May 2, 2014. The hearing for that motion is scheduled for June 10, 2014. Until that motion is resolved, Debtor's plan is unconfirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

6. [14-23118](#)-C-13 RENE E PODREBARAC OBJECTION TO CONFIRMATION OF
RMD-1 Timothy J. Walsh PLAN BY ALLIANT CREDIT UNION
5-6-14 [[20](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on May 6, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Alliant Credit Union, opposes confirmation of the Plan. On September 18, 2006, Debtor executed and delivered to Creditor a Note in the sum of \$310,000. Debtor executed a delivered to Creditor a Deed of Trust in September 2006, granting Creditor a security interest in real property known as 125 Whitecap Way, Fairfield, California.

The plan proposes making ongoing monthly payments to Creditor, but does not propose to cure the arrearage due. Instead, the plan indicates Debtor will modify the loan outside of bankruptcy.

Creditor is in the process of finalizing its Proof of Claim, but estimates pre-petition arrearage on its claim to total \$47,198.01. This amount does not include late charges, escrow advances, attoreny's fees, costs, or other fees and charges that might otherwise be included once the Proof of Claim is finalized.

The court's decision to deny confirmation. The plan does not contemplate payment of the full amount of arrears due to Creditor and is attempting to modify Creditor's claim without filing a Motion to Approve a Loan Modification or Motion to Value the secured claim. In the Additional Provisions, the Debtor includes the colloquially termed "Ensminger Provisions" the court has used to confirm plans contingent on pending loan modification workouts. However, here, there is no evidence that a loan modification application was submitted to Creditor and there is no pending Motion to Approve Loan Modification. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 24, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtor cannot make the payments called for under the plan or comply with the plan. 11 U.S.C. § 1325(a)(4).

Debtor lists Citi Financial in Class 4 of the plan. Under Section 2.11, it states that ". . . claims . . . are not in default;" however, at the Meeting of Creditors, Debtor admitted the loan made by Citi Financial is not current.

Debtor further admitted at the Meeting of Creditors that her Homeowner's Association dues are not current. The plan provides no treatment as to the default amount of the HOA dues.

The required plan payment is \$2,100; however, Debtor's budget does not support such a payment. Schedule I indicates a monthly bonus of \$1,015.64; however Trustee has not received verification that Debtor receives this bonus on a monthly basis.

The court's decision to deny confirmation. Based on the issues outlined by the Trustee, the court cannot determine whether Debtor can make the payments called for under the plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on May 8, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' plan may not be proposed in good faith. 11 U.S.C. § 1325(a)(3). Debtors propose a plan payment of \$80.00 for 36 months with a total of \$2,880 being paid over the life of the plan. No creditors are to be paid through the plan; however, attorneys' fees of \$2,500 will be paid through the plan, according to section 2.06.

Debtor testified at the First Meeting of Creditors on May 1, 2014, that he filed the case to delay student loan collection and that he has exhausted all available deferment options on his student loans. Trustee is concerned that the case was filed in an effort to hinder or delay a creditor and; therefore, does not comply with 11 U.S.C. § 1325(a)(3).

2. The plan proposes to pay attorneys' fees of \$2,500 through the plan under Local Bankr. Rule 2016-1(c); however, the Disclosure of Compensation of Attorney for Debtors lists that the attorney services do not include some services required under Local Bankr. Rule 2016-1(c), such as dischargability actions, judicial lien avoidances, and relief from stay actions. Trustee believes counsel for Debtor is option out of 2016-1(c)(1) and opposes attorneys' fees being granted under that section.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

In addition to \$50,000 in student loans, Debtors owe almost \$32,000 in other unsecured debts, mostly related to medical problems. These debts comprise almost 39% of the unsecured debt load of \$81,918.

Debtors have not maintained an extravagant lifestyle. Combined six-month average income is less than the IRS Standard income for a family of three. Monthly rent of \$950 consumes 25% of their net income. The value of all personal assets in Schedule B is less than \$25,000.

Debtors assert that any windfall revenue they may receive will "come into the Plan to increase the distribution to the allowed unsecured claims."

Debtors allude to filing an amended Disclosure of Compensation.

Discussion

The court's decision is to deny confirmation. Debtors' plan proposes payment of \$80.00 per month for thirty-six months. The only creditor receiving payment through the plan is Debtors' counsel, at \$2,500. In Class 4 of the plan, USAA Federal Savings Bank will continue receiving monthly automobile loan payments of \$136.00 per month for a 2002 Ford Escape XLT Sport. Debtors propose a 0% dividend to unsecured creditors, owed approximately \$75,518.

The court shares the Trustee's concern regarding Debtors' good faith in pursuing a Chapter 13 bankruptcy and questions why Debtors chose Chapter 13 versus Chapter 7. One possible explanation is that Debtors were guided into Chapter 13 by counsel, the only creditor anticipating reception of a dividend under the plan. Counsel is scheduled to receive \$4,000 in compensation, the maximum permitted for Chapter 13 consumer counsel under Local Bankr. Rule 2016-1(c)(1). Debtors do not appear to be using Chapter 13 to protect interests in a residence or vehicle or reorganize non-dischargeable debt. Rather, the main result of Debtors' Chapter 13 is discharge of unsecured debts stemming from medical and credit card bills.

Further, the court is concerned about contradictory representations made by Debtors' counsel. First, in the Disclosure of Compensation of Attorney for Debtor(s), counsel for Debtors provide that the following services are not included in counsel's representation of Debtors:

Representation of the debtors in any
discharability actions, judicial lien
avoidances, relief from stay actions or any
other adversary proceeding. Preparation and
filing of reaffirmation agreements and
applications as needed; preparation and filing
of motions pursuant to 11 U.S.C.
§ 522(f)(2)(A) for avoidance of liens on
household goods.

Meanwhile, in the Rights and Responsibilities of Chapter 13 Debtors and their Attorneys, counsel agreed to the following, among other services:

(12) Prepare, file, and serve any other motion that may be necessary to appropriately represent the Debtor in the case.

(14) Where appropriate, prepare, file, serve and set for hearing

motions to avoid liens on real or personal property and motions to value the collateral of secured creditors as required by Local Bankruptcy Rule 3015-1(j).

(15) Provide such other legal services as are necessary for the administration of the Debtor's case before the Bankruptcy Court.

It is clear that the scope of the Rights and Responsibilities agreed to by Debtors' counsel includes potential dischargeability actions, lien avoidance actions, relief from stay actions, and reaffirmation agreements and applications. The court queries which agreement dictates counsel's anticipated representation in this case. Is it the Rights and Responsibilities or the Disclosure? No amended Disclosure of Compensation has been filed on the docket, adjusting the services included to be parallel with the Rights and Responsibilities. Counsel is not entitled to a \$4,000 fee where services explicitly required by the court are specifically excluded by counsel in the Disclosure.

Until these issues and all others detailed by the Trustee are explained and resolved, the court cannot confirm the present plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 1, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2275 Julie Way, Live Oak, California. The Debtor seeks to value the property at a fair market value of \$126,296.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$177,750.00. Bank of America's second deed of trust secures a loan with a balance of approximately \$46,800.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2275 Julie Way, Live Oak, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$126,296.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Convert and convert the case to a proceeding under Chapter 11. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtors seek to convert this case from Chapter 13 to Chapter 11. Pursuant to 11 U.S.C. § 1307(d), at any time before confirmation of a plan and after notice and a hearing, the court may convert a Chapter 13 case to a Chapter 11 case. Here, Debtor complies with the requirements of 11 U.S.C. § 109 and, there being no opposition, the court will convert the case to Chapter 11.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted and the case is converted to a proceeding under Chapter 11 of Title 11, United States Code.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on May 20, 2013. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Sell. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order approving the sale of real property commonly known as 1905 Slingshot Drive, Plumas Lake, California. The prospective buyer made an offer to purchase the property at \$250,000.00 (Exh. A). The value of the property is estimated at \$230,000.00. The current mortgage on the property is \$169,096.39, due and owing to Dovenmuehle Mortgage, Inc.

The Bankruptcy Code permits the trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Sell having been
presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Sell is granted and Debtor is authorized to
sell the property located at 1905 Slingshot
Drive, Plumas Lake, California, California to
buyer for no less than \$250,000.00.

12. [13-32842](#)-C-13 DOYLE ROSS AND KIMBERLY MOTION TO CONFIRM PLAN
PGM-4 BARNETT 4-9-14 [[66](#)]
Peter G. Macaluso

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee filed a non-opposition to the Motion. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the
Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by
the Debtor having been presented to the court, and upon
review of the pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [14-23045](#)-C-13 GWENETH MCROY OBJECTION TO CONFIRMATION OF
TSB-1 Sally C. Gonzales PLAN BY DAVID P. CUSICK
4-30-14 [[23](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on April 24, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor is \$2,277.44 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,277.44 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date.

The court's decision to deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2014. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [13-33148](#)-C-13 CAROLYN KIRKPATRICK
TSB-3 Timothy J. Walsh

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS , MOTION TO
DISMISS CASE
4-2-14 [[35](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Dismiss without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee filed this Motion to Dismiss prior to the court considering confirmation of Debtor's Chapter 13 Plan, filed on March 5, 2014. The Chapter 13 Trustee filed a statement of non-opposition to confirmation of Debtor's plan and the court is prepared to grant the Motion to Confirm the plan at the hearing on June 3, 2014.

Debtor is current under the terms of the confirmed plan and resolve Trustee's issues that were raised in the Motion to Dismiss. As the court has confirmed a plan in Debtor's chapter 13 case and there appears no cause to dismiss the case at this time, the court's decision is to deny the motion to dismiss without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by

the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

16. [14-22849](#)-C-13 DAVID BALL OBJECTION TO CONFIRMATION OF
NLE-1 Cindy Lee Hill PLAN BY DAVID P. CUSICK
Thru #17 4-30-14 [[27](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 30, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan does not pass Chapter 7 liquidation analysis. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$32,555 and Debtor is proposing a 3% dividend to unsecured creditors, which will pay approximately \$9,681. As proposed, Debtor's plan will actually calculate to pay approximately \$12,504, which is insufficient to satisfy the liquidation analysis. Debtor's non-exempt property includes \$32,550 of the Note for Sale of Debtor's business, Clark Heat & Air. The balance owed from the sale is \$54,489, of which Debtor had exempted \$21,934.
2. Debtor's plan proposed to pay \$6,000 in attorneys' fees. Schedule I shows Debtor has no business income. Debtor's plan and the Rights and Responsibilities indicate \$6,000 in attorneys' fees; however, only \$4,000 is permitted in a non-business case under LBR 2016-1(c)(1).

3. Debtor's plan is not his best effort. 11 U.S.C. § 1325(b). Debtor is above median income. His Form B22C shows line 59, Debtor's monthly disposable income, with a net excess income of \$644.53. Based on the applicable commitment period of 60 months, the unsecured creditors should receive \$38,671. Debtor is currently proposing a 60 months plan at 3% to general unsecured creditors; therefore, unsecured creditors are not receiving what they are entitled.
4. Trustee questions Debtor's household size. Debtor lists a household of three, with Schedule J indicating two dependent daughters, ages 22 and 24. Debtor does not report any income from either dependant, but admitted at his Meeting of Creditors that one of his daughters is the purchaser of his heat and air business and is the same daughter from whom he receives payment each month for the not payable for the sale of the business. Trustee argues it is clear that this daughter is not a dependent and that Debtor has not reported all household income. Trustee suggests that Debtor be required to report all household income.
5. Trustee recalculated Debtor's B22C deductions, and determined that Debtor's actual monthly disposable income is \$1,733.35. This figure would pay unsecured creditors \$104,000 over the life of the plan. Trustee argues that Debtor is not entitled to the deduction listed on line 19 and \$1,034 should be added back into the plan. Further, Debtor deducts payments for certain liens, but at the same time filed Motions to strip the subject liens which, if granted, would result in greater recovery for the unsecured creditors.
6. Debtor's plan relies on three pending motions. Debtor has three Motions to Value set for hearing on May 20, 2104. If the Motions are not granted, Debtor may lack sufficient funds to afford the plan payment as proposed.
7. Debtor did not use the new Official Form B6I and Official Form B6J.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. Debtor agreed to sell his heat and air business to his daughter for \$150,000, payable for \$30,000 down and a note of \$120,000 carried back and payable at \$500 per month. Debtor used substantially all income from that sale to stave off litigation, but was unable to sustain the demands of his creditors.
2. Debtor operated and owned the business until 2013 and the majority of his non-residential debts stem from that business. The sale transaction with his daughter involved his business and generated a considerable amount of pre-petition work to be performed by his bankruptcy counsel. Debtor argues the case is business in nature and counsel should

appropriately be compensated \$6,000.

3. As for liquidation analysis, Debtor calculates non-exempt equity at \$11,589 with eventual payout to unsecured creditors of \$2,360.72, or 3%. Debtor believes Trustee is basing his calculations on valuing a note payable from Camille deNouf Ball at its principal remaining value, instead of its current market value. Debtor believes the amount owing on the note as of the date of filing is \$54,489, but further believes that the current fair market value of the note is \$32,636.
4. While Form B22C shows that Debtor can afford more than the sum proposed, the majority of the income is based on payments on the note of Camille deNouf Ball, which are not sustainable at the historical rate. Debtor asserts that despite line 29 of Form B22C, he is make his best efforts.
5. The Motion to Value the secured claim of PNC was continued to July 22, 2014.

Discussion

The court's decision is to deny confirmation based on the following analysis.

Liquidation Analysis

Whether Debtor's plan passes liquidation analysis depends on the value assigned to the note payable to Debtor by his daughter, Camille, and the resulting non-exempt equity. The note was executed as part of the purchase agreement entered into by Debtor and Camille, whereby she purchased Clark Heat & Air Conditioning for \$30,000 down and a note of \$120,000.

Trustee values the non-exempt value of the note at \$32,555. The balance owed on the sale is \$54,489, of which Debtor exempted \$21,934.

Debtor asserts that Camille has presented evidence of additional payments Trustee did not consider in his calculations because Debtor received them after he presented the Trustee with the breakdown of payments made on the note. Debtor argues that the payments made reduce the note balance to \$31,679. Using the figures provided to the Trustee, Debtor calculated the value of the note to be \$32,693 (5% interest, payable at \$500 per month for the next 13 years). With the amount due under the new reconciliation, Debtor argues the value is closer to \$20,000. He argues that the discount taken off of face value represents the real risk that the business could fail.

The court recognizes a discrepancy in the information provided to Trustee. It is unclear whether Debtor has provided Trustee with the additional payments he now uses in calculating the value of the note. The court is sustaining the Trustee's objection as to the liquidation analysis issue. Before a new plan is presented, the court encourages Debtor to provide all updated information on note payments to the Trustee and to work with the Trustee to determine an agreeable value for the note. If the parties cannot agree to an appropriate method of calculation, the court is prepared to set an evidentiary hearing on the matter to conclusively resolve the valuation issue.

Attorneys' Fees

The court looks to several factors to determine whether or not a case will qualify as a "business case," for purposes of awarding a higher Guideline Fee. The following non-exhaustive list provides some factors the court will consider:

- 1) Are there employees (other than the debtors themselves) and employee-related issues?
- 2) Is there an established place of business other than the home?
- 3) Do the debtor's obligations consist primarily of consumer or trade debt?
- 4) Is there a significant amount of inventory, or equipment (e.g., vehicles, machinery, fixtures, etc.) not normally found in a home?
- 5) Are there any executory contracts or leases that need to be assumed or rejected to protect the business?
- 6) Are there business-related debt obligations that may have to be restructured?
- 7) Are there any cash-collateral issues that need to be resolved?
- 8) Are there any non-consumer related relief from stay issues?
- 9) Are there any business-related tax issues (e.g., State sales tax, payroll withholding, etc.)?
- 10) Did the debtor file a Business Income and Expenses statement? If so, what is the ratio of business expense to total business income?
- 11) Were there any objections to confirmation of the chapter 13 plan?
- 12) Are there any unusual factors that may increase the workload or risk of non-payment to debtor's attorney?

In re Dorsett, 297 B.R. 620, 625 (Bankr. E.D. Cal. 2003). Here, the first hurdle to Debtor's classification as a "business case" is that Debtor is an individual who does not own the business he is purporting substantiates the basis for the "business" classification. Debtor is an employee of Clark Heat & Air Conditioning. The only other employee's the court is aware of are Debtor's two daughters: Theresa and Camille (the current owner of the business). Debtor's bankruptcy involves no contracts related to the operation of the business and Debtor did not file a Business Income and Expense statement.

In his opposition to the Trustee's Objection, Debtor asserts that the fees are justified because the majority of his non-residential debts stem from the business and because the sale transaction with his daughter involved a considerable amount of pre-petition work to be performed by his bankruptcy counsel. The court is not interested in compensating Debtor's counsel for pre-petition work concerning the sale transaction Debtor effectuated to stave off creditors. The court is concerned with compensation for the representation of a Chapter 13 debtor. LBR 2016-1(a).

Debtor discloses on his voluntary petition, signed under penalty of perjury, that his debts are primarily consumer debts, as defined in 11 U.S.C. § 101(8) (Dkt. 1). Some of his debts appear to derive from his prior operation of Clark Heat & Air Conditioning; however, these unsecured non-priority debts represent the only factor favoring "business case" classification.

The totality of the circumstances, including Debtor's statement that the majority of debts are consumer debts, the fact that Debtor does not own the business, and the lack of a Business Income and Expenses statement persuade the court to sustain the Trustee's objection to the fees requested and deny classification of Debtor's case as a "business case." The effect of the court's determination is the limitation of attorneys' fees to a maximum of \$4,000 for representation of a Chapter 13 Debtor under Local Bankr. Rule 2016-1.

Best Efforts

The court shares the Trustee's concerns regarding whether the plan and prosecution of this case represent Debtor's best efforts. First, Debtor has two employment, adult dependents residing with him and he reports no income from either dependent. Debtor explains in his declaration that the daughters do not contribute to household expenses; however, all household income should be reported to the court.

Debtor includes on Schedule I income of \$300.00 on line 8a, as net income from rental property and from operating a business, profession, or farm; however, Debtor did not attach a statement showing necessary business expenses and total net monthly income. This information is required to be disclosed. Further, there are no corresponding business expenses listed on Schedule J.

The court recognizes Debtor and Camille's Declarations that explain the decrease in the note payment from historical data and is willing to accept the Debtor's explanation contingent on the remaining confirmation issues being resolved.

Pending Motions

As stated by Debtor, there remains a pending Motion to Value the secured claim of PNC. Without resolution of this Motion, the court cannot determine whether Debtor can afford the payments under the plan. The court overrules the Trustee's objection as to the other two pending Motions to Value, as they were granted at the hearing on May 20, 2013 (Dkts. 56 & 57).

Schedule I & J Forms

Debtor filed Amended Schedules I & J on the new Official Forms (Dkt. 49). Trustee's objection is overruled as to this issue.

Disposition

For the forgoing reasons stated above, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained where stated and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

17. [14-22849](#)-C-13 DAVID BALL
SAS-1 Cindy Lee Hill

OBJECTION TO CONFIRMATION OF
PLAN BY PNC BANK, N.A.
4-30-14 [[31](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 30, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). A Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, PNC Bank, N.A., opposes confirmation of the Plan because it attempts to reclassify the secured Proof of Claim filed by PNC as an unsecured claim. PNC objects to the plan as it seeks to modify the rights of PNC Bank as a creditor whose claim is secured only by a security interest in real property that is the Debtor's primary residence in direct contravention of 11 U.S.C. § 1322.

Debtor's Opposition

Debtor argues the Objection is not ripe at this time at the Motion to Value the secured claim was continued to July 22, 2014.

Discussion

The court's decision to sustain the objection and deny confirmation. The court is simultaneously sustaining, in part, the Objection to Confirmation filed by the Chapter 13 Trustee. Here, the Motion to Value the secured claim of PNC remains pending. The court cannot determine whether Debtor's plan is feasible and whether Debtor can afford the proposed plan payments until this Motion is resolved.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. [14-20452](#)-C-13 DAVID/NANCY VENABLE MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 4-7-14 [[24](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. Forty-two days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's

Chapter 13 Plan filed on April 7, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

19. [14-22652](#)-C-13 ADAM/SARAH REDFIELD MOTION TO VALUE COLLATERAL OF
CAH-1 C. Anthony Hughes SIERRA CENTRAL CREDIT UNION
Thru #20 4-21-14 [[20](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 21, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1886 18th Street, Olivehurst, California. The Debtor seeks to value the property at a fair market value of \$75,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$156,811. Sierra Central Credit Union's second deed of trust secures a loan with a balance of approximately \$26,593. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured

claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Sierra Central Credit Union secured by a second deed of trust recorded against the real property commonly known as 1886 18th Street, Olivehurst, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$75,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 24, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection and confirm the plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it relies on the pending Motion to Value the secured claim of Sierra Central Credit Union. Without a disposition on this motion, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The Court is granting the Motion to Value the secured claim of Sierra Central Credit Union at the hearing on June 3, 2013. Therefore, the court will overrule the Trustee's objection and confirm the plan as proposed.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on March 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [12-27059](#)-C-13 JOHN/MICHELE HUNTER MOTION TO RATIFY QUIT CLAIM
MDP-8 Melissa D. Polk DEED
4-30-14 [[144](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 30, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Ratify Quit Claim Deed has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Ratify Quit Claim Deed is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Debtors request an order from the court ratifying a quit claim deed executed by Debtors for real property located at 1426-1428 Flora Street, Crockett, California. The property was purchased in 2003 by Robert and Graciela Mendez. On March 24, 2004, Mr. & Mrs. Mendez added Debtors to the title of the property to assist with refinancing the mortgage. Debtors held no financial interest in the property. Debtors received no income from the rental of the property and did not pay the property taxes, mortgage, or other costs associated with the property.

Debtors' Chapter 13 Plan was confirmed on October 9, 2012. Mr. & Mrs. Mendez recently sold the property and, in anticipation of sale, executed a quit claim deed on January 4, 2014. The Deed was recorded on

March 26, 2014. Prior to closing, North American Title Company notified Mr. & Mrs. Mendez of Debtors' ongoing bankruptcy and informed them that Debtors would be required to seek court approval of the quit claim deed prior to escrow closing.

Debtors bring this motion in support of their request for ratification of the January 4, 2014 quitclaim deed.

Chapter 13 Trustee

On May 6, 2014, The Chapter 13 Trustee filed a statement of non-opposition to Debtor's Motion.

The court's decision is to grant the Motion to Ratify Quit Claim Deed. The Trustee has no opposition to granting the Motion and the court is assured that it is in the best interest of Debtors' continued reorganizing and will not negatively impact Debtors' creditors or estate.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Ratify Quit Claim Deed filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Ratify Quit Claim Deed is granted.

22. [14-22559](#)-C-13 SCOTT/WENDY BLANEY
NLE-1 Gerald B. Glazer

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
4-24-14 [[22](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on May 23, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

23. [13-35864](#)-C-13 CHARLES BEYER
TSB-1 Ulric N. Duverney

CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO DISMISS
CASE FOR FAILURE TO PROVIDE TAX
DOCUMENTS , MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
2-3-14 [[40](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 3, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the motion to dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on January 30, 2014. The Trustee lacks sufficient information to determine whether or not the case is suitable for

confirmation with respect to 11 U.S.C. § 1325.

2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor is \$224.67 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$224.67 is due on February 25, 2014. Debtor has paid \$0.00 into the plan to date.

PRIOR HEARINGS

At the February 19, 2014 hearing on this Motion, Counsel for the Debtor and his spouse stated that the Debtor's grandson is to assist financially and could possibly serve as a personal representative. Further, the Debtor having obtained a reverse mortgage, there appears to be a substantial amount of future interest which has been paid and would be lost if the Debtor does not prosecute a feasible plan.

Before dismissing the case, the court continued the case to allow Debtor the opportunity to further prosecute this case. Civil Minutes, Dckt. No. 60. It appears that Debtor's Counsel appeared at the 11 U.S.C. § 341 Meeting of Creditors on February 27, 2014, and the Meeting was concluded as to Debtor. On March 3, 2014, the court sustained Creditor OneWest Bank, FSB's objection to confirmation of Debtor's Plan. Dckt. No. 69.

At the April 16, 2014 hearing, the court continued the matter for it to be heard in conjunction with Debtor's Motion to Appoint a Personal Representative (UND-3).

CHAPTER 13 TRUSTEE RESPONSE, filed 05/19/14 (Dkt. 96)

The Chapter 13 Trustee filed a response to UND-3, that addresses the concerns outlined in the Motion to Dismiss.

Debtor and his wife appeared at the February 27, 2014 Meeting of Creditors. Trustee examined the Debtor, who did not appear to understand the purpose of the meeting.

Debtor's grandon has agreed to pay Debtor's care payment of \$469 and contribute \$500 per month toward household expenses to assist Debtor's ability to make plan payments. No declaration of support has been filed iwth the court.

Debtor is delinquent \$219.50, but has paid in \$679.18 to date. Trustee believes Debtor is running a month behind in payments, but the only payment missed was the first plan payment due on January 25, 2014.

Debtor provided Trustee with Social Security statements to support income reported on Schedule I.

Debtor provided Trustee with a declaration asserting that Debtor is not required to file tax returns due to low income.

Discussion

The court's decision is to deny the motion and not dismiss the case. As Trustee detailed in his response, many of the issues plaguing Debtor's case have recently been resolved. Part of the issue with the prosecution of this case stemmed from a lack of personal representative for the estate. The court is granting Debtor's Motion to Appoint a Personal Representative on June 3, 2014 and appointing Max Perry as personal representative of Debtor's estate.

While Debtor still needs to resolve a small delinquency issue, the court is satisfied that he and his personal representative will continue working with the Trustee to devise a successful chapter 13 plan. Cause does not exist to dismiss the case at this time.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is denied without prejudice.

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Office of the United States Trustee on March 25, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for the Appointment of a Guardian Ad Litem has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(2), and Federal Rule of Bankruptcy Procedure 2002(b). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for the Appointment of Personal Representative for Debtor. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an order appointing Max Perry as personal representative of Debtor, pursuant to Federal Rule of Bankruptcy Procedure 1004.1. Debtor makes this motion on the grounds that Debtor is incapacitated as he is afflicted with dementia. Debtor states that he is not capable of pursuing this Chapter 13 without the assistance of a personal representative.

BACKGROUND

On December 19, 2013, Deborah Allen ("Allen") filed a Chapter 13 on behalf of her husband, Debtor Charles Beyer ("Beyer"), as his "next friend."

In 2007, Beyer took out a reverse mortgage and pledged the family residence as collateral. Before it was placed in the family trust, the property was held as Beyer's separate property. The reverse mortgage required the borrower to maintain insurance on the property and pay the real estate taxes. Beyer breached the agreement by not paying the property taxes, and at times allowed the property insurance to lapse. The reverse mortgage company (Financial Freedom, a division of OneWest Bank, FSB) deemed the non-payment to be a default of the reverse mortgage contract and began foreclosure proceedings. A trustee's sale was scheduled to take place on December 20, 2013.

The Motion states that due to his mental illness, Beyer is unable to prosecute this matter on his own. Beyer's wife, Allen, testifies in her declaration that her husband is afflicted with dementia, and due to his condition, Beyer cannot drive and requires assistance in getting dressed, taking his medication, attending his doctor's appointments, and undertaking normal day-to-day activities. ¶ 2, Declaration of Deborah Allen in Support of Appointment of Guardian Ad Litem, Dckt. 24 at 2. Allen states that Beyer has extremely short term memory, and has become extremely paranoid, and that his condition has deteriorated significantly. *Id.* at 2-3. She further states that because of his dementia, Beyer would not understand these bankruptcy proceedings or their significance. *Id.*

Movant requests that the court take judicial notice of the Declaration of Reinhardt Hilzinger, M.D., filed with this court on February 18, 2014. Hilzinger attests that the Debtor, Beyer, is one of his patients, and that he is a physician duly licensed to practice medicine in the state of California. Hilzinger states that it is his opinion that as a result of his dementia, Beyer is incapable of realizing and making rational decisions with respect to his financial responsibilities, and that he will need the assistance of someone in managing his financial affairs. ¶ 4, Declaration Regarding Capacity, Dckt. No. 80.

Federal Rule of Evidence 201 provides when judicial notice may be taken by a federal court,

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Hilzinger's Declaration does not contain facts that would be generally known within the court's jurisdiction, and with contentions that can be accurately or readily determined from sources whose accuracy cannot be questioned. The court denies Movant's request for judicial notice of the contents of the Declaration Regarding Capacity. The court will, however, consider Hilzinger's Declaration as an opinion of Beyer's capacity, mental condition,, and state of compromised decision-making.

Declaration of Max Perry, filed 03/25/14 (Dkt. 81)

Mr. Perry testifies that he is willing to serve as Debtor's personal representative. He understands that in this role he will be reviewing, signing, and submitting various documents to the court and he appreciates the importance of submitting accurate documents.

Mr. Perry currently serves on the Board of Directors of the Alzheimer's Aid Society of Northern California and has been affiliated with the organization for fifteen years.

During his tenure on the Board, he has assisted people afflicted with Alzheimer's or dementia and their families. He has specifically assisted in locating and applying for various state and federal benefits, locating housing and care, and supervised self-help classes for care givers.

Mr. Perry attended and graduated from law school; however, he has never practiced law.

CHAPTER 13 TRUSTEE RESPONSE, filed 05/16/14 (Dkt. 96)

Chapter 13 Trustee agrees that it is in the Debtor's best interest to allow appointment of a guardian as Debtor's real property is subject to a reverse mortgage that is in danger of foreclosure. The Trustee does not oppose the appointment of a guardian or personal representative.

Debtor and his family request the court authorize Max Perry, who is on the board of directors for the Alzheimer's Aid Society of Northern California, be appointed personal representative over Debtor's estate. Trustee has researched the Alzheimer's Aid Society of Northern California and believes it to be an established organization. The Trustee has no cause to object to the request for appointment of a personal representative.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person.

Federal Rule of Bankruptcy Procedure 1004.1 further states:

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a

debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1004.1 is patterned after Federal Rule of Civil Procedure 17(c), which applies to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7017. ("The following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary. The court shall appoint a guardian ad litem for an infant or in competent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."). Fed. R. Civ. P. 17(c).

Here, the Movant has provided competent, sworn evidence from Debtor's physician, Dr. Reinhardt Hilzinger, M.D., regarding Debtors' dementia, and inability to make rational decisions with respect to his financial responsibilities. Movants argue that Debtor is incompetent to handle the bankruptcy case, and that the court shall appoint a personal representative or next friend to prosecute Debtor's bankruptcy case.

The court takes seriously the appointment of a guardian and recognizes the Chapter 13 Trustee's support of the specific appointment of Max Perry. The Chapter 13 Trustee represents he has investigated the ability of Max Perry to represent Debtor's estate and has no cause to object to the requested appointment of Max Perry as a personal representative. Therefore, the court will grant the Motion for the Appointment of Personal Representative for Debtor and appoint Max Perry as the personal representative.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for the Appointment of a Guardian Ad Litem filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for the Appointment of a Personal Representative/ Next Friend is granted and Max Perry is appointed as the personal representative of Debtor's estate.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 1, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 9537 Rachel Street, Live Oak, California. The Debtor seeks to value the property at a fair market value of \$81,558.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$101,200.00. Creditor CitiMortgage Inc.'s second deed of trust secures a loan with a balance of approximately \$33,650.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s)

having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiMortgage Inc secured by a second deed of trust recorded against the real property commonly known as 9537 Rachel Street, Live Oak, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$81,558.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

26. [13-35188](#)-C-13 MARIA ESPINOZA MOTION FOR RELIEF FROM
DJD-1 Julius M. Engel AUTOMATIC STAY
Thru #27 2-13-14 [[34](#)]
SETERUS, INC. VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 13, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the motion for relief from stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

On March 25, 2014, the court heard and granted this Motion to Relief from the Automatic Stay, filed by Creditor Seterus, Inc. No opposition was presented at the hearing, prompting the court to enter the defaults of the Debtor and the non-responding parties in this matter.

On April 30, 2014, Debtor filed a Motion to stay a foreclosure sale and reinstate the automatic stay. Debtor argued that she was current on her plan and that a motion to confirm was set for June 3, 2014. The court granted the Motion on the grounds represented by Debtor and vacated the Order granting the Motion for Relief from Stay.

The Motion was reset for hearing on June 3, 2014 to be heard in conjunction with Debtor's Motion to Confirm.

REVIEW OF THE MOTION

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

- A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust. The court accepts the loan servicing company as being a real party in interest for a motion for relief from the automatic stay.

- B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.
- C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.
- D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total \$2,400.93.
- E. No post-petition payments have been made to Movant.
- F. The principal amount due and owing on the Note is \$129,274.36 and there is also an additional deferred principal of \$56,479.13 owed under the modification Agreement.
- G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of \$141,611.00.
- H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$2,400.93 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$185,753.46, as stated in the Robinson Declaration and drawn from the Loan Modification Agreement (Exh. D, Dckt. 38), while the value of the property is determined to be \$141,611, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee Response, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent \$1,105.00 and the plan is not confirmed. Debtor has paid a total of \$1,105.00 to date. The Trustee will disburse \$807.00 to Seterus on February 28, 2014.

Supplement to Motion for Relief From Automatic Stay, filed 3/6/14 (Dckt. 48)

On March 6, 2014, Movant filed a supplement to its Motion for Relief from Automatic Stay, clarifying that it is seeking relief from the stay under 11 U.S.C. §§ 362(d)(1) & (2).

DISCUSSION

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, Movant provides the court with information concerning the subject property and related debt and, through the supplement, provided the court the grounds upon which it is seeking relief.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court vacated its previous order based on Debtor's representations that she was no longer delinquent and planned on presenting the court a confirmable plan on June 3, 2014. A review of the plan and the Trustee's objection to the plan illustrates that Debtor is not current on plan payments and may not be able to afford the plan payments. The court is prepared to enter an order denying the Motion to Confirm on June 3, 2014.

Although the Motion for Relief proceeding has been reopened, Debtor has not filed any further documents or evidence showing that she is attempting to become current on her plans on the Creditor's note, or have upheld her payment obligations on the loan modification agreement that she entered with Creditor in 2012, or has tried curing the arrearage on the Creditor's claim.

Debtor has not followed through on the "changed circumstances" that she

argued existed in the Motion to Stay Foreclosure sale and the court's decision is to grant the Motion for Relief from Stay.

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Seterus Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4321 Greenholme Drive, Sacramento, California.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 29, 2014. By the court's calculation, 35 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has not been properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

The court's tentative decision is deny the motion to confirm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

DEFECTIVE SERVICE

Local Bankruptcy Rule 3015-1(d)(1) provides that if the Debtor modifies the Chapter 13 Plan before confirmation pursuant to 11 U.S.C. § 1323, parties-in-interest shall be served at least forty-two (42) days prior to the hearing in compliance with both Federal Bankruptcy Rule 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). Here, Debtor served the Motion to Confirm Plan the Amended Plan on the Chapter 13 Trustee, the United States Trustee, and all creditors on April 29, 2014, just 35 days before the scheduled hearing date. No order to shorten time was requested under Local Bankruptcy Rule 9014-1(f)(3).

Service of this Motion is therefore defective.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

(1.) Debtor is \$1,305 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,325.00 is due on May 25, 2014. Debtor has paid \$5,320.00 into the plan to date.

(2.) Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J reflects \$1,150, however, Debtor is proposing a plan payment of \$1,325 per month.

(3.) Debtor proposes paying the Class 1 on-going mortgage payment and arrears. Creditor's Motion for Relief is pending and set to be granted on June 3, 2014.

The court's decision is to deny the Motion to Confirm. Debtor's plan does not comply with the requirements for Chapter 13 plan confirmation, as detailed by the Chapter 13 Trustee.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan denied.

28. [13-23589](#)-C-13 ANTHONY/ANGELIKA SARGETIS CONTINUED MOTION TO DISMISS
TSB-3 Julie B. Gustavson CASE
Thru #29 2-21-14 [[83](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 21, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Dismiss Case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

March 19, 2014 Hearing

Debtors counsel appears and explained to the court that the Motion to Confirm the Chapter 13 Plan was filed the morning of March 19, 2014. It was also explained that Debtors had not yet engaged the services of a real estate agent to liquidate the property as proposed in the Chapter 13 plan, because that was only for the Trustee to do.

The court and parties addressed the duties and obligations of Chapter 13 debtors and the proper, and necessary, exercise of powers designated to a chapter 11

and 7 Trustee. See 11 U.S.C. § 1303, sale of property and obligation of debtors to so exercise such powers.

The matter was continued to be heard concurrently with the Motion to confirm.

Review of Motion

Debtors are \$17,707.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$6,108.00 is due February 25, 2014. The case was filed on March 18, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$43,850.00 into the Plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, this case was filed on March 18, 2013, and Debtor has yet to confirm a Plan. Debtors' Motion to Confirm Amended Plan, ULC-4, was heard and denied on November 19, 2013, and Debtors have filed to amend the Plan and set a confirmation hearing to date. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

A review of the docket showed that that an Amended Plan was filed on March 14, 2014, along with a supplemental Schedule J. Dckt. Nos. 87 and 88. Debtors have not yet filed a Motion to Confirm the Plan.

Discussion

Debtors set for hearing the Motion to Confirm the 6th Amended Plan and it is being heard concurrently with this Motion to Dismiss. Debtors' case is becoming extremely long in the tooth, as the petition was filed in March 2013. However, with the recent approval of employment of a real estate broker to market and sell Debtors' residence, the court is hopeful that Debtors' will soon present the court with a confirmable Chapter 13 plan.

Debtors' have set for hearing a concurrent Motion to Confirm the Sixth Amended Chapter 13 Plan. The court continued the hearing on this matter to this hearing date to permit Debtors time to submit further evidence of feasibility to the court and to address the concerns of the Chapter 13 Trustee. Dckt. No. 113.

On May 2, 2014, the Debtors filed supplemental declarations and exhibits in support of confirmation of their Sixth Amendment plan, allaying and addressing many of the Trustee and the courts' concerns regarding the speculative nature of their proposed sale of the property, and previously unexplained changes in the Debtors' household expenses. The Debtors also offer the Declaration of their realtor, who testifies that there has been "excellent activity" on the listing, with many brokers showing the house each week and well-attended viewing sessions, making a sale likely.

The Debtors having pressed forward with confirming their most recently proposed plan, and being current under the terms of their current plan (as acknowledged by the Trustee in Trustee's Opposition to the Continued Motion to Confirm Plan, ULC-5), the court will deny the Motion to Dismiss Case, and allow Debtors to move forward with their efforts to confirm a long-awaited Chapter 13 Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

29. [13-23589](#)-C-13 ANTHONY/ANGELIKA SARGETIS CONTINUED MOTION TO CONFIRM
ULC-5 Julie B. Gustavson PLAN
3-17-14 [[89](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2014. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm Debtors' Chapter 13 Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court previously continued the hearing on this matter from May 6, 2014 to this hearing date, to allow Debtors to submit evidence in support of confirmation of the Plan.

The Chapter 13 Trustee opposes confirmation of Debtors' Sixth Amended Plan based on the following:

1. **Case History.** This is Debtors' 6th Amended Plan (Dkt. 87), as supplemented (Dkt. 98). The court notes that Debtors recently filed a Second Supplemental 6th Amended Plan on April 8, 2014 (Dkt. 106). Trustee has a pending Motion to Dismiss that was continued to the same time and date as this present motion (Dkt. 96). The case was filed 03/18/13, and has had 12 months of payments come due, with the 13th due before the hearing.
2. Debtor has not made a payment to Trustee since December 5, 2013. On December 5, 2013, Debtor paid Trustee \$5000; however, the plan payment due that month was \$6,108.00.

Debtors' prior plan, filed October 7, 2013 (Dkt. 62), called for plan payments of \$5,950 for 3 months, \$6,425 for 3 months, and \$6,108 for 53 months. Debtor is in the 12th month of the Plan through March 25, 2014 and has paid a total of \$43,850 into the plan to date. Debtors are \$29,923 delinquent under the terms of the prior plan, which was filed on October 7, 2013. Debtors have not indicated why they fell delinquent and what happened to the money that was not paid into the plan for the last five months.

Debtors are current under the pending plan filed March 14, 2014. Since Debtors decreased the payments for the first 12 months of the plan, they do not have to make another payment until Mar 25, 2014.

3. Debtors' plan does not pass the liquidation analysis under 11 U.S.C. § 1325(a)(4). The plan proposes to sell Debtors' real property at 4350 Winding Hill Lane, Fair Oaks, California. According to the Residential Listing Agreement attached to Debtors' Motion as Exhibit B, Debtors are selling the property for \$749,000. According to Schedule D, the secured debts against the mortgage total \$458,229, leaving \$290,771 non-exempt and Debtor is proposing to pay priority unsecured debt in the amount of \$123,754, leaving the total non-exempt amount at \$167,017. Debtors are proposing a 0% dividend to unsecured creditors.
4. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$3,370 for 12 months, \$3,100 for 9 months, then \$2,250 for 39 months with a 0% dividend to unsecured creditors.

(A.) Debtors amended Form B22C on April 30, 2014, Line 59 reflects a negative \$19.67; however, based on changes made by Trustee, it should be \$560.33 for 60 months, totaling \$33,619.80.

Debtor revises the following lines on amended Form B22C:

Line 44:L \$50.00 for additional food and clothing without evidence that this expense is reasonable and necessary.

Line 48: \$530.45 for other payments on secured claim; however, Debtor is not proposing a monthly dividend to Class 1 arrears.

(B.) Debtors' Declaration states that they are anticipating needing to save \$3,000 per month in the event the residence sells in the next few months and; therefore, they are proposing a reduction in plan payments to \$3,100 for months 13 through 22. Debtors filed a supplemental Schedule J on March 14, 2014 and added a \$3,000 per month expense for Savings for first, last, and security deposit and moving expenses. Debtors deduct this expense for 10 months of the Plan, totaling \$30,000. Debtor does not provide any evidence of the anticipated expenses, which do not appear reasonably necessary for the maintenance and support of Debtors and their dependents.

Debtors' Declaration also states that once the residence is sold, they anticipate additional expenses in their budget. They state

their proposed plan payments due to these additional expenses shall be \$2,250 for months 23 through 60. Debtor does not explain the nature of these additional expenses.

In the Amended Schedule J, Debtors make the following changes:

- Adds anticipated rent \$2,700 for a family of fourth; however, the IRS standard for a family of four in Sacramento County is \$2,045.
- Adds renters insurance at \$150.00 per month.
- Increases the food expense from \$825 to \$950 per month.
- Increases the clothing expense from \$100 to \$175 per month.
- Adds personal care for \$150 per month
- Increases transportation from \$680 to \$825 per month
- Increases entertainment from \$130 to \$200 per month
- Increases personal income taxes from \$625 to \$1,050 per month
- Adds \$225 for contribution to son's college expenses per month

Where Debtors previously did not claim these expense amounts, the Amended Schedule J, absent specific evidence such as a specific explanation of the expense in a declaration, bills, or bank statements, should not convince the court the expenses exist in the amounts claimed.

5. Debtors are not proposing any monthly dividends to secured creditors until sale of the residence occurs. The plan is not proposing a dividend to on Class 1 mortgage arrears and to the IRS in Class 2, until the sale of the real property occurs, anticipated by December 31, 2014.
6. Debtors filed a supplemental 6th Amended Plan on March 31, 2014. The only change to the plan is that Debtors added Section 6.02, which appears to address the approval by the Court of an order allowing Debtors' to employ a real estate broker to market and sell their personal residence.

Debtors' Response, filed 04/11/14 (Dkt. 109)

Debtors offer the following in response to the Trustee's opposition:

The 6th Amended Plan requires that the secured IRS obligations and the priority debts be paid no later than December 31, 2014. The exact amount available for unsecured creditors will not be known until the residence sells.

Debtors will file a Motion to Dismiss their Chapter 13 plan if they cannot sell their house within the time constraints of the plan.

Debtors state they had no incentive to make further payments into their case because they believed their case was going to be dismissed.

Debtors considered conversion to Chapter 11 upon the suggestion of Judge Sargis, but came to the conclusion that they could not afford the costs involved in a Chapter 11 case.

Debtors sought tax assistance to work out a plan for repayment with the IRS; however, these efforts were unsuccessful.

Debtors argue that the proposed plan does not fail liquidation. Debtors believe the property will sell for closer to \$700,000. Debtors anticipate the listing price being much lower than \$749,000 due to recent sales in the surrounding area.

Whether the property sells for \$749,00 or \$699,000, after costs of the sale, the secured liens and priority lien will be paid in full and any remaining balance will be paid to unsecured creditors. The proposed plan does not say that unsecured creditors will receive a 0% dividend, it states that they will receive no less than 0%.

Debtors assert that expenses were previously cut to "bare bones" levels in order to make the earlier proposed plans work. They argue that adding \$50.00 per month to the budget for food and clothing for a household of four is "nothing."

Arrearage on the Class 1 debtor will be paid along with the principal on those debts, when escrow closes on the sale of Debtors' home.

Debtor argues that the \$3,000 monthly savings expense is necessary and reasonable as the cost of relocating and affording first and last months rent in a rental home will run about \$18,000 to \$20,000. This includes cost of hiring a moving company and costs of hauling away things they not longer need.

Debtors base the monthly rental estimate on what Zillow.com states is a "low-average" rent in Fair Oaks, Sacramento. Debtors need to find a rental that will accommodate four adults, as their two grown sons still reside with Debtors. This means they need parking for four vehicles.

Debtors state that any excess saved will be turned over to the Trustee for distribution to unsecured creditors.

The Amended Schedule J reflects reasonable expenses Debtors anticipate facing in 2015 and beyond. Debtors will no longer have homeowners' insurance and taking out renter's insurance is reasonable. The additions to the food expense will bring Debtors' household more in line with what an average family of four adults spends on food in a month.

Debtor argues the increase in clothing costs is reasonable because Mr. Sargetis is in need of new work clothes.

Debtors added \$150 in personal care for the family members to afford haircuts and the occasional manicure.

Transportation costs increased with the costs of gasoline, engine oils, smog inspections, tune-ups, vehicle registration, and other routine care maintenance.

Debtors argue the increase in entertainment expenses is to permit the family to "have some kind of social life."

The increase in personal income taxes are based on Debtors selling their home and no longer having the tax deduction that comes with home-ownership.

Debtors assert it is not unreasonable for them to assist with their son's college education costs. He is attending a local school with low tuition costs.

The 6th Amended Plan provides for continued monthly payments for the holder of the mortgage until the house is sold and escrow is closed, after which there will be no expense for the house.

The Second Supplemental 6th Amended Plan adds the following in the Section 6.06: "Section 2.15. Class 7 General Unsecured Creditors shall receive a pro-rata share of any net proceeds remaining, if any, but no less than a 0% dividend, that the Trustee receives after all other Class creditors have been paid in full." (Dkt. 106).

Discussion

The court perceives two broad issues with Debtors' plan. The first issue concerns increases in expenses and moving savings without valid justification. The second issue is the contingent nature of the residence sale and distribution to unsecured creditors.

Debtors' response does explain the increase in expenses; however, Debtors did not submit a Declaration testifying to the justifications provided in the Response. The court lacks admissible, competent evidence it can use to make findings of fact as to reasonableness and necessity.

Debtors have the same issue with their moving expense projections. The court understands that Debtors need to plan in advance; however, Debtors do not provide the court with specific financial projections concerning moving costs. Debtors want to save \$3,000 per month for "first and last months' rent and security deposit for a rental property, in addition to the costs of moving." This is a significant monthly savings and more than general reference to "costs of moving" will be required before the court will conclude that the expense is reasonable and necessary. Again, Debtors attempted to address this in their Response; however, no Declaration testifying to the specific types of costs was filed on the court's docket.

The court is willing to consider confirmation of Debtors' plan based on a contingent sale of its residence; however, because the plan's funding is contingent the court will require very convincing evidence concerning feasibility, ability to make plan payments, and proposed expenses.

Section 11 U.S.C. § 1325(a)(6) provides that one of the necessary elements for confirmation of a chapter 13 plan is that "the debtor will be able to make all payments under the plan and to comply with the plan." If a proposed sale that is funding the plan is too uncertain, a debtor cannot show that the Chapter 13 plan is feasible.

The court is encouraged by Debtors' proposal of a drop dead date eight months after confirmation of the plan. However, before the court can determine that the sale is sufficiently probable to confirm this plan, it requires more information, perhaps from the employed real estate professional, concerning current sale prospects, the state of the market for the subject property, and the final terms of the listing agreement. The court suggests preparing a Declaration by the real estate professional setting forth this information and any other information the court would find useful in determining that the proposed sale is not "too speculative" for the purposes of Chapter 13 plan confirmation.

The court continued this matter to this hearing date to allow Debtors to

submit more evidence in support of confirmation.

DECLARATIONS OF DEBTORS AND ARAX BUTLER

In their Declaration filed on May 28, 2014, Debtors state that they have diligently worked with their attorney to propose numerous plans and budgets that would meet the requirements of each plan and provide for their monthly living expenses. Dckt. No. 119.

Debtors state that they have met with a real estate agent and have entered into a Residential Listing Agreement for the sale of their home. The Agent has provided reports to show the basis for the listing price, and based on the Agent's representations, Debtors believe that their home is priced accurately for the market.

Debtors state that they also need to prepare for the inevitable move from their residence to another home and the expenses that will be associated with that move, including first and last months' rent and security deposit for a rental property, which together could likely total just under \$9,000.00, in addition to the costs of moving. Debtors state that they have obtained over-the-phone estimates for transferring their belongings from our current house to a new residence in the Fair Oaks area that ranges from \$3,000.00 - 5,000.00. Debtors have estimated their moving costs are likely to be anywhere from \$5,000 to \$10,000. They anticipate needing to save approximately \$3,000.00 per month in the event the home sells in the next few months, and therefore have proposed a reduction in our plan payments to \$3,100.00 for months 13 through month 22.

Debtors state their understanding that if their home does not sell in the next few months, but does so in the fall, the \$3,000 per month savings might be excessive. In that case, they propose that any excess savings not necessary for moving expenses will be turned over to the case trustee for distribution to creditors once their moving expenses are paid. Debtors attach a copy of recent advertising for rentals, demonstrating the range of rental values for the size home that Debtors would need in the Fair Oaks area, marked as Exhibit "A," Dckt. No. 120. Debtors state that they have examined their utilities costs, which have increased since their initial Petition and Plan were filed. Additionally, Debtors state that they now have a monthly obligation for health insurance of \$328.96 per month, and that they have decided to provide more for their personal care product and service expenses.

Debtors also explain that they have increased their transportation costs by \$145.00 per month because of the increase in gas costs. Debtors also explain increased contributions towards their son's college costs.

Debtors also file the Declaration of Arax Butler in Support of Confirmation of the Plan, Dckt. No. 121. Ms. Butler testifies that he is employed as sales associate at Coldwell Banker Residential Brokerage, and that Debtors signed an Exclusive Right to Sell Agreement with Coldwell Banker in February of 2014, with Butler as their salesperson, and that the company listed their property at \$773,500 at that time. Prior to presenting the listing agreement for signatures, Ms. Butler states that he presented market information to Debtors showing comparable properties that had closed escrow, those that were in escrow and those that were on the market. At that time, it appeared that the agreed upon listing price was competitive. That starting price was increased when Ms. Butler updated his market research when Debtors filed their Motion to Employ Ms. Butler.

Ms. Butler states that from the beginning of the listing, the property has experienced excellent listing, with many brokers showing the house each week. Ms. Butler's broker tours have been well attended, with a "large number of real estate agents going through the Property" and giving him feedback. The property's open houses have supposedly drawn a great number of potential buyers to the property. The listing price has again been reduced to \$700,00 in response to comments received from brokers, salespersons, and members of the public. *Id.* at ¶ 7.

Ms. Butler states that according to a tracking service that he uses, thousands of people have clicked on the listing for the property in the last few months, but he has not yet received any offers on the property. The listing price was again reduced to \$675,000.00 based on adjustment some architecturally obsolete features that have to be changed or rebuilt, and small repairs and maintenance tasks that have been performed in order to spruce up and maintain the home. Ms. Butler states that they are now hitting the prime season for real estate sales, with school ending for summer breaks and families in the market wishing to relocate before the new school year begins. Ms. Butler states that he believes that there will be heightened activity due to the decreased price and increase in number of buyers, and that the final sales price will be between \$650,000.00 and \$675.00, and that the sale and close of escrow before the end of the year. ¶ 12, Declaration of Arax Butler, Dckt. No. 121.

In their Declaration, Debtors state that their Sixth Amended Plan no longer includes retention of their house, so they will no longer need to deduct the mortgage interest on their tax returns and their personal income taxes will be higher; their anticipated income will be the same, but their itemized deductions will be significantly lower, resulting in a greater personal income tax. While Debtors currently now have health care premiums that may help offset their itemized deductions slightly, and reduce their tax liability, they have reduced their previous calculation as shown on the Supplemental J Schedule from \$1,050.00 to \$850.00, which is their best "guesstimate" as to the necessary change in their budget.

In providing justifications in their sworn statements, made under the penalty of perjury, for various changed expenses as listed in their Supplemental Schedule J (filed with their Sixth Amended Plan), the Debtors have painted a more detailed picture of their living expenses, and remaining projected income for their monthly Chapter 13 Plan payments. The evidence provided in the form of Debtors' Declaration, in addition to the declaration furnished by their real estate agent, Arax Butler (testifying that the sale of Debtors' property is likely over the next few months) provides a credible basis for the court to evaluate the feasibility and Debtors' ability to make plan payments under the proposed Chapter 13 Plan.

Ms. Butler's declaration is particularly helpful in assuring the court that the proposed sale of the property is not just speculative, and that extensive preparations have been undertaken by the Debtors and their realtor to market and sell the subject property. Having reviewed the totality of the pleadings, and Debtors' supplemental documentation showing that the sale of the Debtor's residence is imminent and that additional funding to fund Debtors' plan payments will result, the court determines that the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Plan is so confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on April 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court

30.	14-24289 -C-13	ISAAC NYDEN AND CAROLA	MOTION TO VALUE COLLATERAL OF
	MRL-1	ALICE MAY	JP MORGAN CHASE BANK, N.A.
	<u>Thru #31</u>	Mikalah R. Liviakis	5-14-14 [16]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 15, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 910 Branciforte Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$109,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see

also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$124,658.00. The second deed of trust on the property secures a loan with a balance of approximately \$49,641.41. The third deed of trust, held by respondent Creditor JPMorgan Chase Bank, N.A, secures a claim of \$29,793.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The respondent creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A., secured by a third deed of trust recorded against the real property commonly known as 910 Branciforte Street Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$109,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA ALICE MAY
MRL-2 Mikalah R. Liviakis
MOTION TO VALUE COLLATERAL OF
THE BANK OF NEW YORK MELLON
TRUST COMPANY
5-14-14 [[19](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 15, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 910 Branciforte Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$109,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$124,658.00. The second deed of trust on the property, held by the respondent Creditor, the Bank of New York Mellon Trust Company, N.A., f/k/a/ the Bank of New York Trust Company, N.A. as Successor-in-Interest to JPMorgan Chase Bank, N.A. as Trustee for Mastr Alternative Loan Trust 2005-2 ("Creditor"), secures a loan with a balance of approximately \$49,641.41. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The respondent creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding

June 3, 2014 at 2:00 p.m.

Page 62 of 82

that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Bank of New York Mellon Trust Company, N.A., f/k/a/ the Bank of New York Trust Company, N.A. as Successor-in-Interest to JPMorgan Chase Bank, N.A. as Trustee for Mastr Alternative Loan Trust 2005-2, secured by a second deed of trust recorded against the real property commonly known as 910 Branciforte Street Vallejo, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$109,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

32. [14-22991](#)-C-13 ANTHONY HANDLEY
MG-1 Matthew J. Gilbert
Thru #33

MOTION TO VALUE COLLATERAL OF
GMAC MORTGAGE, LLC
4-14-14 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings (included an Amended Notice of Hearing) were served on Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 17, 2014 and May 2, 2014. By the court's calculation, at least 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 134 Carlsbad Cir, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$210,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$294,377.01. Creditor GMAC Mortgage, LLC's second deed of trust secures a loan with a balance of approximately \$19,627.39. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of GMAC Mortgage, LLC, secured by a second deed of trust recorded against the real property commonly known as 134 Carlsbad Cir, Vacaville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$210,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

33. [14-22991](#)-C-13 ANTHONY HANDLEY OBJECTION TO CONFIRMATION OF
TSB-1 Matthew J. Gilbert PLAN BY DAVID P. CUSICK
4-30-14 [[23](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on April 30, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value the Secured Claim of GMAC Mortgage, LLC, MG-1, which is set for this hearing date. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

The court is granting Debtor's Motion to Value the Secured Claim of GMAC Mortgage, LLC, Dckt. Control No. MG-1, thus resolving Trustee's singular objection. The Objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

IT IS ORDERED that the Objection to Confirmation of Plan is overruled.

34. [13-33092](#)-C-13 FELIX/LADORA GARCIA
NLE-1 Charnel J. James
Thru #35

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
CUSICK

3-18-14 [[75](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on March 18, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is dismissed as moot and confirmation is denied. No appearance required. The court makes the following findings of fact and conclusions of law:

At the April 22, 2014 hearing, the court decided to set the Objection for final hearing on this hearing date. The court continued the Objection to allow for additional opposition by Debtors, to be submitted by the deadline of May 2, 2014, and for the reply of the Trustee to be filed by May 12, 2014.

REVIEW OF MOTION

The Chapter 13 Trustee initially opposed confirmation of the Plan on the

following grounds:

1. The case was originally filed as a Chapter 7 on October 8, 2013. Debtor converted to a Chapter 13 on January 24, 2014. The Disclosure of Compensation of Attorney for Debtor, Dckt. No. 1, provides that "for legal services, I have agreed to accept \$1,200.00; Prior to the filing of this statement I have received \$300.00; Balance Due \$900.00." This document was signed by Rajdep S. Chima, who is not the attorney of record in this case.
2. The Statement of Financial Affairs, Question #9, which was filed in the same date as the Petition, states that Debtors paid Rajdep S. Chima \$385.00 on September 25, 2013. Debtors filed the Chapter 13 Plan and Rights and Responsibilities on February 7, 2014, both documents state that Debtors paid their attorney \$1,200.00.
3. It is unclear whether or when the \$900.00 was paid to the attorney--whether it was paid before or after conversion from a Chapter 7, and whether it was paid after the petition before conversion, and whether the collection was appropriate considering the automatic stay and that attorney fees would be discharged in the Chapter 7. Debtors have opted in to the guidelines for payment of attorney fees, which requires that the attorney cannot take any additional fees after February 7, 2014.
4. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors propose plan payments of \$241.33 for 60 months, with a 0% dividend to unsecured creditors. The monthly projected disposable income on Schedule J reflects \$20.15, therefore Debtors cannot make the payments proposed. Debtors admitted at the First Meeting of Creditors held on March 13, 2014, that they have an auto insurance expense of \$175.00 per month, but this is not listed on Schedule J.
5. Debtors' Statement of Financial Affairs is also incomplete. Debtors admitted at the Meeting of Creditors that they have been receiving social security income since 2010, and Felix Garcia has been receiving pension income since 2000; however, Debtor has not listed this prior income on Question #2 of the Statement of Financial Affairs.
6. It appears that the Plan is not Debtors' best effort, under 11 U.S.C. § 1325(b). Debtors are under median income and proposes plan payments of \$241.33 for 60 months with a 0% dividend to unsecured creditors. Debtors list 2 auto payments on Schedule J, in the amounts of \$177.80 and \$365.95.
7. The Debtor admitted at the First Meeting of Creditors held on March 13, 2013, that the payment of \$177.80 was for the 2000 Ford Ranger listed on Schedule D, which Debtor stated had been paid in full and is free and clear of any liens. Debtor also admitted that the payment of \$365.95 was for the 2003 Ford Ranger, which is being paid in Class 2 of the Plan and should not be listed on Schedule J. Joint Debtor also admitted at the First Meeting of Creditors that her son contributes \$300.00 to the household expenses, but this income is not listed on Schedule I.
8. Debtors have not used the new Official Form B 6I (Schedule I) and Official Form B 6J (Schedule J), which became the standard forms on December 1, 2013.

AMENDED PLAN

Debtors did not file any opposition or response to the Objection, but did file additional supplemental documents, to which Trustee filed an additional response. The Trustee took issue with Debtors' payment of attorney fees, which did not comport with the Plan and Rights and Responsibilities filed in the case, and Debtors' ability to make payments under the plan, as well as whether the Plan represents Debtors' best efforts. Dckt. No. 118.

Subsequent to the filing of this Objection, the Debtors their First Amended Chapter 13 Plan on May 12, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

35. [13-33092](#)-C-13 FELIX/LADORA GARCIA
RTD-2 Charnel J. James

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY SCHOOLS
FINANCIAL CREDIT UNION
3-20-14 [[81](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is dismissed as moot and confirmation is denied. No appearance required. The court makes the following findings of fact and conclusions of law:

Subsequent to the filing of this Objection, the Debtors their First Amended Chapter 13 Plan on May 12, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Objection to Plan was continued from May 6, 2014, to this hearing date. Dckt. No. 113. Nothing further has been filed on the docket since the continuance from the May 6, 2014 hearing on this matter.

REVIEW OF THE OBJECTION

Creditor Valley Bank ("Creditor"), opposes confirmation of the Plan on the following grounds:

1. Debtors propose to increase plan payments by \$500 per month to \$2,300 beginning at Month 15. Item #17 in Debtors' Amended Schedule I states that the increase in payments is based on Debtor Rodney Lambert restoring dealer licensing and increasing income, and that rent collected will increase by \$50 increments each year.
2. Creditor argues that Debtor's income is uncertain; Rodney Lambert is self-employed as a used auto sales broker, and his business is located in Florida and he does not have a current auto dealer license. Transcript, page 16. At the 341 Meeting, Debtor Rodney Lambert further testified that he has lived in California one year, and has been looking for employment but has not yet found such employment with an auto dealership in California. Rodney

Lambert testified that he intends to work to make income before reactivating his license and start a similar business in California. It is unclear whether Rodney Lambert will be able to earn enough income to allow him to obtain a dealer license, start his own auto dealer business, and increase monthly income in time to make the stepped up monthly plan payment.

3. Rodney Lambert also testified that, with respect to the increase in rent of \$50 per month each year, Rodney Lambert testified that the current tenants have agreed to keep renting the rental property in Florida and will agree to annual rent increases, and that the tenants told him they only want to sign a one year contract at first and then will sign a new one. The Chapter 13 Plan has a term of 60 months, and Debtors' rental tenants have only signed contract for one-year periods at the price of \$1,300 per month, as stated in Debtors' Amended Schedule I.
4. Creditor states that Debtors' income may not be sufficient if the Chapter 13 Plan Payments are Increased after Debtors' Motion to Value the Secured Claim of Creditor is denied. The court notes that this Motion has been continued to this hearing date. Dckt. No. 87.

Based on these concerns, Creditor argues that the Chapter 13 Plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). Creditor additionally states that its mortgage on Debtor Rodney Lambert's rental property includes a lien on the rents and profits from that property. The Bank has not consented to the use of its cash collateral, but is willing to do so on in the context of its use in the Chapter 13 Plan, which must described how the net monthly proceeds in collected rent will be used to either repair, maintain, or protect the court's collatera

April 8, 2014 Hearing

At the first hearing on this Motion, the court continued the matter for supplemental briefing.

Debtors' Response

Debtors propose to increase the plan payment by \$200.00 per month and increase the monthly dividend to Valley Bank from \$1,220.00 to \$1,370.00.

Debtors filed Amended Schedules I & J on April 8, 2014, which "fine tunes" the budget and permits Debtor to start paying the Trustee \$200 more per month than the amount stated in the plan.

Debtors argue that the plan is feasible. Debtor has a job interview and is anticipating that he can earn a gross income of \$3,200 per month as stated in the Amended Schedules I & J.

Debtors plan on stepping up payments to the Trustee by \$500.00 in month 15 of the plan. They argues the step-up is feasible because of good job prospects with Lexus of Sacramento for Mr. Lambert. He has a competitive bonding quotation to enable him to reinstate his dealer's license. The bond will cost in \$1,5000 and he expects to work for Lexus of Sacramento "for a while" and then either be promoted or start his own automobile dealership.

The tenant in Florida continues to make \$1,300.00 per month rental payment. Debtors argue that Amended Schedules I & J address the concerns regarding utilities and repairs in the rental property. Tenant agreed to pay for all utilities and "most repairs." Debtors' brother has agreed, free of charge, to

complete repairs the tenant refuses to complete.

Debtors assert there is no error in the amended schedules. The pay stub of Mrs. Lambert contains a \$1,828 health insurance line, which a "cafeteria item" situation. The State of California, her employer, gives her an allowance which she uses to pay for health insurance.

Creditor's Reply, filed 04/29/14 (Dkt. 109)

Creditor does not object to the proposed increased payment to lender.

Creditor is concerned that Debtor Mr. Lambert's employment status remains uncertain. If he can secure the proposed position, some of Creditor's doubts about the feasibility of the plan will be resolved.

Debtors did not address all of the expenses associated with Debtor reestablishing his license to be a dealer. Debtors assert that the cost of the bond to reestablish the license is \$1,500. Creditor assumes this is a one-time payment, but is unsure. Creditor also notes that the regular expenses from operation of business or profession, Item 16 on Amended Schedule J, have been reduced to zero from \$930.10, without explanation. If these expenses were a result of Debtors' auto-brokering business, then there is a chance that the expenses will "resume" when Debtor reestablishes his dealership license and business.

Discussion

The court's decision is to sustain the objection and deny confirmation at this time. The court notes that it is sustaining the simultaneous objection of the Chapter 13 Trustee. While Debtors have remedied concerns regarding payments due to Valley Bank and overall plan payments, the court remains concerned about the contingent nature of the income derived from Mr. Lambert's employment, which remains pending as of the date of these pleadings. The court is not convinced that the plan complies with 11 U.S.C. § 1325(a)(6) and will not confirm the plan at this time.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on March 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This Objection to Plan was continued from May 6, 2014, to this hearing date. Dckt. No. 113. Nothing further has been filed on the docket since the continuance from the May 6, 2014 hearing on this matter.

REVIEW OF THE OBJECTION

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the pending Motion to Value the Secured Claim of Valley Bank, RG-2, which has not yet been resolved.
2. The Plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors' Amended Schedule I indicates gross monthly income on line 1 for Chandra Lambert of \$5,724.56, and payroll deductions of \$570.23 for taxes, \$261.45 for insurance, and \$408.92 for retirement, leaving a net income of \$3,383.96. Debtors' most recent paystubs provided to the Trustee indicates gross income of \$6,192.00 per month, deductions of \$669.38 for taxes, \$345.77 for insurance, \$454.32 for retirement, and \$8.00 for charity, leaving a net income of \$4,705.53. Debtor has approximately \$321.00 of additional net income which may be paid into the

plan for the benefit of creditors.

3. Debtors may not be able to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because their amended Schedule I indicates gross business income of \$4,422.43 per month. Debtor Rodney Lambert testified at the First Meeting of Creditors that he is in the process of closing his Florida business and will be seeking employment. Trustee is not certain Debtor actually has the income listed on the Schedule at this time.
4. Debtors have not provided the required business documents to Trustee to date, such as the Business Questionnaire, six months of bank statements, and six months of profit and loss statements.
5. Debtors have not used the new Official Form B 61 and Official B 6 J (Schedules I and J) forms, which became standard on December 1, 2013.

April 8, 2014 Hearing

At the first hearing on this Motion, the court continued the matter for supplemental briefing.

Trustee's Response, filed 04/14/14 (Dkt. 96)

The Motion to Value the secured claim of Valley Bank resulted in an Amended Stipulation (Dkt. 90) to value the secured claim at \$72,000. This is \$7,000 higher than what the plan provided for. This resolves Trustee's specific objection but may result in more than \$116.67 needed per month for the creditor if the original plan did not allow for an increased payment.

Trustee objected to confirmation based on the most recent pay stubs (Dkt. 76); however, Debtors amended their Schedules to match the most recent pay stubs, except that the amount reflected for health insurance is apparently \$354.00. The most recent paystub shows \$1,828.77, it appears that the plan is the Debtors' best efforts, but Debtors may not be able to afford the payments.

Trustee questions whether the likelihood of employment at the rate suggested, \$3,200 per month, is sufficient to confirm a plan.

Debtors provided Trustee with sufficient business information and has filed new firms (Dkt. 76).

Where Debtors are proposing to pay \$7,000 more to Valley Bank, for a total of \$72,000 plus 4% interest, the plan will not pay claims as proposed as Valley Bank would receive only \$72,570. The Trustee calculates that approximately \$1,326 per month would be needed to pay it in 60 months.

Debtor's Response, filed 04/22/14 (Dkt. 103)

Debtors propose to increase the plan payment by \$200.00 per month and increase the monthly dividend to Valley Bank from \$1,220.00 to \$1,370.00.

Debtors filed Amended Schedules I & J on April 8, 2014, which "fine tunes" the budget and permits Debtor to start paying the Trustee \$200 more per month than the amount stated in the plan.

Debtors argue that the plan is feasible. Debtor has a job interview and

is anticipating that he can earn a gross income of \$3,200 per month as stated in the Amended Schedules I & J.

Debtors plan on stepping up payments to the Trustee by \$500.00 in month 15 of the plan. They argues the step-up is feasible because of good job prospects with Lexus of Sacramento for Mr. Lambert. He has a competitive bonding quotation to enable him to reinstate his dealer's license. The bond will cost in \$1,5000 and he expects to work for Lexus of Sacramento "for a while" and then either be promoted or start his own automobile dealership.

The tenant in Florida continues to make \$1,300.00 per month rental payment. Debtors argue that Amended Schedules I & J address the concerns regarding utilities and repairs in the rental property. Tenant agreed to pay for all utilities and "most repairs." Debtors' brother has agreed, free of charge, to complete repairs the tenant refuses to complete.

Debtors assert there is no error in the amended schedules. The pay stub of Mrs. Lambert contains a \$1,828 health insurance line, which a "cafeteria item" situation. The State of California, her employer, gives her an allowance which she uses to pay for health insurance.

Trustee's Response

Trustee does not oppose the inclusion of the changed plan payments and plan payment schedule to be incorporated into the Order Confirming the Plan.

As it stands, Debtors have resolved many of the Trustee's concerns regarding plan confirmation. What remains uncertain is Debtor Mr. Lambert's employment at a rate of \$3,200.00 per month. The court needs to be convinced of a debtor's ability to make plan payments before confirming a Chapter 13 plan. 11 U.S.C. § 1325(a)(6). Right now, Mr. Lambert's monthly income is contingent on being hired at a certain rate and contingent on increases over the course of the plan. Without secured employment, the court cannot be convinced that Debtors can afford the plan payments are the rate proposed based on contingent income. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not approved. The court notes that Creditor Valley Bank has also filed an Objection to Confirmation of the Chapter 13 Plan, KO-1, which the court is also sustaining on this hearing date. This instant objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

38. [14-21752](#)-C-13 SCOTT MILES
LBG-2 Lucas B. Garcia

MOTION TO EMPLOY RICHIE BROS.
AUCTIONEERS AS AUCTIONEER(S)
O.S.T.
5-23-14 [[70](#)]

Local Rule 9014-1(f)(3) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter13 Trustee, all creditors, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 11 days' notice was provided.

Tentative Ruling: The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Employ. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor seeks authorization of the employment of an Auctioneer, Richie Bros. Auctioneers, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330, to assist Debtor in marketing and selling the personal properties:

- a) 930G Caterpillar Loader;
- b) 1987 T80 Kenworth Mixer Truck;
- c) C500 Kenworth Dump Truck;
- d) 1990 357 Peterbilt Mixer Truck;
- e) 314C Caterpillar Hydraulic Excavator;
- f) 18 in Caterpillar Excavator Bucket;
- g) 32 in Caterpillar Excavator Bucket;
- h) 30 in Excavator Ripper;
- i) 24 in Excavator Compaction Wheel;

j) SG240 D&M Excavator;

and k) HD422 D&M Excavator

Debtor argues that the Auctioneer will be able to expose the vehicles to a large number of prospective purchases, and be able to sell the properties for the best possible price. Debtors state that pursuant to a contract to auction between Debtor and Richie Bros. Auctioneers, the Auctioneers are charging a \$65.00 "document administration fee" for each item of Equipment requiring title or registration documents, 10% for any lot realizing more than \$2,500 and 25% for any lot realizing \$2,500 or less but with a minimum \$100 fee per lot for their services."

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Here, the Debtor fails to state whether Richie Bros. Auctioneers holds an adverse interest to the Estate or is a disinterested entity pursuant to the requirements of 11 U.S.C. § 327. In fact, the Motion states that Debtor has used the services of the Auctioneer in the past, and has "had successful transactions through them." ¶ 5, Motion, Dckt. No. 70.

In the absence of a declaration or statements in the Motion stating that the professional does not hold or represent in an interest adverse to the estate, and to ensure the court that the parties are not entering into an arms-length transaction in the nature and scope of services to be provided, the court cannot grant the Motion. The Movant does not attach any declaration or evidentiary support demonstrating that there is no conflict of interest or competing interests in the relationship between Debtor and the Auctioneer in connection with Auctioneer's work for the estate. Thus, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is denied.

June 3, 2014 at 2:00 p.m.

Page 77 of 82

Local Rule 9014-1(f)(3) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2014. By the court's calculation, 20 days' notice was provided.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Permit Debtor to Sell Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b). Here, the Debtor proposes to sell the following personal property:

- a) 930G Caterpillar Loader;
- b) 1987 T80 Kenworth Mixer Truck;
- c) C500 Kenworth Dump Truck;
- d) 1990 357 Peterbilt Mixer Truck;
- e) 314C Caterpillar Hydraulic Excavator;
- f) 18 in Caterpillar Excavator Bucket;
- g) 32 in Caterpillar Excavator Bucket;
- h) 30 in Excavator Ripper;
- i) 24 in Excavator Compaction Wheel;
- j) SG240 D&M Excavator;
- and k) HD422 D&M Excavator

Debtor states that he has solicited Ritchie Brothers Auction to sell the property, and that he is confident that Ritchie Brothers Auction will be the best price that can be achieved in the sale of this kind of property in the current market.

Debtor further requests that 90% of the proceeds of the potential sale be turned over to the Trustee for "administration through the plan and 10% will go to the Debtor for living costs." ¶ 8, Motion, Dckt. No. 76.

DISCUSSION

Federal Rule of Bankruptcy Procedure 2002(c)(1) requires that notices of a proposed use, sale, or lease of property shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under §363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.

Additionally, Local Bankruptcy Rule 3015-1(b)(1) states that debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor must comply with LBR 3015-1(i).

Local Bankruptcy Rule 3015-1(i)(4) provides that:

Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of \$1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:

- (A) The sale price represents a fair value for the subject property;
- (B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (D) The sale price is all cash;
- (E) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and
- (F) The sale is an arm's length transaction.

Here Debtors' Motion does not state whether the purchase price represents a fair value for the property, whether all creditors with security interests

encumbering the property will be paid in full before or concurrently with the transfer of title from Debtors to buyers; the costs of sale; whether the sale prices is all cash; and whether the sale is an arm's length transaction.

Here, it is unclear from the Motion whether the Debtor is actually requesting authorization for a proposed sell of the subject assets. The Motion does not include any details on the proposed sales price, the identity of a proposed purchaser (and whether the proposed purchaser has any relationship to the Debtor), the identity of any creditors whose claim is secured by the property to be sold and the amounts of liens that may be encumbering the property, itemized estimates of the closing costs, or disclosure of the proposed disbursement of the proceeds of a sale. A sales price is not specified in the body of the Motion, and the buyers have not been named. Rather, it appears that Debtor is asking that the court authorize some prospective sale that has not yet occurred, on terms that the court has not reviewed.

In the absence of such information, the court cannot determine whether the proposed sale is in the best interest of the Estate, and no procedures have been established to allow the court to consider any additional offers from other potential purchasers at the scheduled hearing. Debtor seems to be asking that the court approve a blank check for a sale that will happen sometime in the future, without giving the court an opportunity to review and approve any purchase agreement for the listed assets.

Furthermore, no explanation is given as to why the Debtor is requesting that 90% of the sales proceeds be turned over to the Trustee for administration for the estate, and why 10% of the funds from the sale are going to the Debtor for "living costs." The Debtor has not explained the need for additional funds to cover his "living costs." A Debtor's Chapter 13 Plan provides for the living expenses, such as food, clothing, utilities, and rent, of Debtors, and factors in the amount of a Debtor's expenses in the calculation of appropriate payments under the plan. Plan payments are adjusted for a Debtor's gross monthly income, and excess income above the median or disposable monthly income that a debtor receives after subtracting Internal Revenue Service standard living expenses.

The Motion does not state the grounds for relief with particularity under Federal Rule of Bankruptcy Procedure 9013, because it does not state the terms of the proposed sale as necessitated by Federal Rules of Bankruptcy Procedure 2002 and 6004. Additionally, Debtor asks that a portion of the sales proceeds be remitted to Debtor directly, without explanation and evidentiary support as to why Debtor should be entitled to collect directly from the sale proceeds. Based on the foregoing, the Motion is denied.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to sell property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Sell Property is denied.

40. [14-20995](#)-C-13 RODNEY/CHANDRA LAMBERT
Richard L. Jare

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
4-9-14 [[91](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on April 14, 2014). The court docket reflects that on June 2, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
discharged, no sanctions are ordered, and the case
shall proceed.

41. [14-20995](#)-C-13 RODNEY/CHANDRA LAMBERT
Richard L. Jare

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
5-9-14 [[115](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 5, 2014). The court docket reflects that on June 2, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Order to Show Cause having been presented
to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Order to Show Cause is
discharged, no sanctions are ordered, and the case
shall proceed.